

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WILLIAM L HARRIS,

Plaintiff,

v.

CITY OF KENT et al.,

Defendants.

Case No. C20-1045 RSM-TLF

REPORT AND  
RECOMMENDATION

Noted for December 10, 2021

This matter comes before the Court on plaintiff's motion to enforce settlement. Dkt. 90. This matter has been referred to the undersigned Magistrate Judge. *Mathews, Sec'y of H.E.W. v. Weber*, 423 U.S. 261 (1976); 28 U.S.C. § 636(b)(1)(B); Local Rule MJR 4(a)(4). For the reasons set forth herein, the Court should deny plaintiff's motion.

FACTUAL BACKGROUND

Plaintiff's motion states that on September 18, 2021, plaintiff "reviewed, amended, and signed a full and final settlement release" of his claims. Dkt. 90 at 1. Plaintiff states that the defendants' attorney sent him the release which plaintiff attached to the motion. *Id.* Further, plaintiff explains that he amended the release by increasing the amount of damages and modifying the language of the release. *Id.* Plaintiff expresses that his understanding was that the release would go into effect 30 days after he signed the document and that the document did not require countersignature by the defendants. *Id.* at 2. Plaintiff asks the Court to enter an order enforcing the attached

1 release and to order defendants to pay plaintiff an additional \$375.00 per day for failing  
2 to timely pay plaintiff the amended settlement amount. *Id.*

3 Plaintiff attached the Release and Indemnification Agreement. Dkt. 90 at 6-8. The  
4 Release and Indemnification Agreement shows that plaintiff crossed out an original offer  
5 amount of \$10,000 and replaced it with an amount of \$2,750,000. *Id.* at 6.

6 Defendant opposed plaintiff's motion (Dkt. 93) and plaintiff filed a reply (96).

### 7 DISCUSSION

8 The Court has the authority to enforce settlement agreements entered into by the  
9 litigants while the litigation is pending. *In re City Equities Anaheim*, 22 F.3d 954, 957  
10 (9th Cir. 1994). A settlement agreement is a contract and is thus governed by the  
11 principles of state contract law. *Wilcox v. Arpaio*, 753 F.3d 872, 876 (9th Cir. 2014).  
12 Mutual assent is an essential requirement for the formation of a valid contract. *Burnett v.*  
13 *Pagliacci Pizza, Inc.*, 196 Wn.2d 38, 48 (2020).

14 The parties must objectively manifest mutual assent to the same bargain at the  
15 same time. *Yakima Cnty. Fire Prot. Dist. No. 12 v. City of Yakima*, 122 Wn.2d 371, 388  
16 (1993). "Mutual assent generally takes the form of an offer and an acceptance." *Id.*  
17 Further, "[i]t is a basic rule of contract formation that 'an expression of assent that  
18 changes the terms of the offer in any material respect may be operative as a  
19 counteroffer; but it is not an acceptance and consummates no contract.'" *Rorvig v.*  
20 *Douglas*, 123 Wn.2d 854, 858 (1994) (quoting *Blue Mt. Constr. Co. v. Grant Cy. Sch.*  
21 *Dist.*, 49 Wn.2d 685, 688 (1957)).

22 Based on the facts presented in plaintiff's motion, no valid, enforceable  
23 settlement exists. Plaintiff has failed to demonstrate that the parties objectively  
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1 manifested assent to the terms of the contract. The original Release and Indemnification  
2 Agreement sent by defendants constituted an offer to release and discharge plaintiff's  
3 claims in exchange for \$10,000. By amending the terms of the offer, plaintiff rejected the  
4 offer and made a counteroffer. *Rorvig*, 123 Wn.2d at 858. This counteroffer is  
5 insufficient to constitute mutual assent to the terms of the contract and does not form an  
6 enforceable contract. *Id.* Plaintiff does not provide any facts that would show the  
7 defendants accepted his counteroffer of \$2,750,000.

8 Further, in response to plaintiff's motion, defendants submitted e-mail  
9 correspondence between defendants' counsel and plaintiff regarding the Release and  
10 Indemnification Agreement. Dkt. 94-7 (9/20/2021 e-mail from defense counsel to  
11 plaintiff); Dkt. 94-8 (9/20/2021 e-mail from plaintiff to defense counsel). In the first e-  
12 mail, defense counsel informed plaintiff that the defendants rejected plaintiff's demand  
13 for \$2,750,000 and reasserted defendants' offer of \$10,000. Dkt. 94-7 at 1. Plaintiff  
14 responded stating "The offer is an insult. We will all move forward accordingly." Dkt. 94-  
15 8 at 1.

16 Based on the foregoing discussion, the Court should find that because no mutual  
17 assent was reached regarding the material terms of the agreement, the parties did not  
18 enter into an enforceable settlement agreement.

#### 19 CONCLUSION

20 The Court should DENY plaintiff's motion to enforce settlement release (Dkt. 90).

21 The parties have **fourteen (14) days** from service of this Report and  
22 Recommendation to file written objections thereto. 28 U.S.C. § 636(b)(1); Federal Rule  
23 of Civil Procedure (FRCP) 72(b); see *also* FRCP 6. Failure to file objections will result in  
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1 a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140  
2 (1985). If objections are filed, the parties shall have **fourteen (14) days** from the service  
3 of the objections to file a response. FRCP 72(b)(2). Accommodating the above time  
4 limit, the Clerk shall set this matter for consideration on **December 10, 2021**, as noted  
5 in the caption.

6 Dated this 24th day of November, 2021.

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Theresa L. Fricke  
United States Magistrate Judge  
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